

Volume I
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Exhibits: None

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

- - - - -x
:
M2 CONSULTING, INC., :
Plaintiff, :
:
vs. : Civil Action
:
MRO SOFTWARE, INC., and CRAIG : No. 03-12589-GAO
:
NEWFIELD, :
Defendants. :
:
- - - - -x

DEPOSITION OF SETH T. STEWART, a witness
called on behalf of the Defendants, taken pursuant
to the Federal Rules of Civil Procedure, before
Linda A. Walsh, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Gesmer Updegrave
LLP, 40 Broad Street, Boston, Massachusetts, on
Tuesday, October 4, 2005, commencing at 10:08 a.m.

PRESENT:

Fee, Rosse & Lanz, P.C.
(By Mark S. Resnick, Esq.)
321 Boston Post Road, Sudbury, MA 01776,
for the Plaintiff.

Gesmer Updegrave LLP
(By Lee T. Gesmer, Esq.)
40 Broad Street, Boston, MA 02109, for the
Defendants.

* * * * *

1 promote it and the incentive to promote it.

2 Q. At some point in time did Mr. Bevington
3 tell you that he had reached an agreement with MRO
4 under which the MRO sales force would promote M²'s
5 service?

6 A. Well, I was at a meeting -- yes, Rick had
7 communicated that to me, and I was at a meeting with
8 Bob Parker when he communicated it to Rick in front
9 of me personally.

10 MR. GESMER: Let's take a short break.

11 (Recess taken from 11:09 to 11:20 a.m.)

12 BY MR. GESMER:

13 Q. Mr. Stewart, what were the topics that you
14 discussed with Mr. Resnick this morning?

15 A. He wanted really to prepare me about the
16 process, you know --

17 MR. RESNICK: You may testify and identify
18 the topics that were discussed. You may not testify
19 as to any conversations that you and I had or any
20 information that was communicated from me to you
21 during this preparation.

22 THE WITNESS: Okay.

23 MR. GESMER: Well, he just testified he has
24 resigned as a director. So he is no longer an

1 A. No, and that really was primarily the
2 meeting, just the process, this morning.

3 Q. So the progress of M²'s business was
4 discussed, and you just described for me what was
5 said on that topic?

6 A. That's correct.

7 Q. Have you exhausted your memory on what was
8 said on that topic?

9 A. I think -- truthfully I think MRO was
10 always very skeptical about the hosted business, and
11 so I think that they were surprised by the progress
12 that Rick had been making. And we did discuss
13 increasing the MRO sales commitment behind M², and we
14 talked about the financials, how it would work for
15 the salespeople. And you know, really the issue --
16 you know, from the time I made my investment up
17 until 2003, you know, it was all about -- you know,
18 one of the big issues was why was this going to
19 be -- why would MRO, you know -- how did they make
20 it attractive to the company financially and how do
21 they make it attractive to their salespeople
22 financially, and I remember a fair amount of
23 discussion about the latter topic, about how this
24 would affect sales commissions.

1 Q. At this dinner?

2 A. At this dinner.

3 Q. What restaurant did this dinner take place
4 at; do you remember?

5 A. No. It was a seafood restaurant, close to
6 the water, about a mile away from Shinnecock Hills.

7 Q. You hadn't been there before?

8 A. Never been there before.

9 Q. When you said that you were describing -- I
10 want to first -- first I want you to tell me
11 generally what topics were discussed and then we can
12 talk about what was said on each particular topic.

13 A. Yes.

14 Q. But am I correct in understanding that the
15 topics that were discussed were general business
16 conditions, how M² is doing?

17 A. Yes.

18 Q. The issue of MRO sales commitment to M²?

19 A. Yes.

20 Q. Financials? I believe you used that term.

21 A. Yes.

22 Q. Are those the three general topic areas?

23 A. Yes, those would be the three general topic
24 areas related to business, you know, MRO and M² and

1 a lot of other, you know, conversational type of
2 stuff outside of that.

3 Q. Right, right. I understand you may have
4 talked about sports and politics.

5 A. Yes, that is kind of the nature of the
6 conversation.

7 Q. So you have told me generally what you
8 recall about business conditions?

9 A. Uh-huh.

10 Q. And -- yes?

11 MR. RESNICK: Say yes.

12 A. Yes.

13 Q. And MRO -- Mr. Drapeau and Mr. Parker
14 seemed pleasantly surprised about how well M² was
15 doing?

16 A. Yes.

17 Q. And they expressed that through their
18 demeanor and tone?

19 A. Yes.

20 Q. And then on the topic of financials, what
21 did that involve?

22 A. Sales commissions.

23 Q. Okay.

24 A. If MRO Software increased the sales

1 commitment -- you know, essentially offered this to
2 their salespeople to sell it, you know, how were
3 they going to incent their salespeople basically.

4 Q. So the topic of financials and sales
5 commitment is really one topic? Because I kind of
6 thought you had broken them up.

7 A. I did. You know, I think in this previous
8 agreement MRO was getting 20 percent, but you know,
9 their attitude is this has got to be more attractive
10 to us financially, you know, so increase the
11 commissions. You know, so there is how does MRO
12 make money and then how does their salespeople make
13 money. Those sort of were the nature of the two
14 discussions around financials.

15 Q. Okay.

16 A. And there was commitment by Bob and Chip to
17 take those two issues on immediately after the
18 meeting.

19 Q. Tell me what you recall Bob Parker and Chip
20 Drapeau saying on this topic.

21 A. They told us -- they reiterated to us that
22 the sales -- in order for this campaign to be
23 successful or that MRO salespeople would promote the
24 M² service it had to be what they referred to as

1 revenue neutral to the salesperson. So the
2 commission they got for selling a piece of software
3 would be the same that they would get for selling a
4 hosted service which is the classic question any
5 software company has when they get into the hosting
6 business.

7 Q. What I would like you to do is just tell me
8 as best you can recall the gist of what the MRO
9 executives said and what M² said on this topic.

10 A. I think they agreed with -- Rick was the
11 one who said, "Look, in order for your people to
12 actively promote this thing it has to" -- you know,
13 "They have got to be paid for it, and it has got to
14 be attractive for them. There is demand in the
15 market, but they are ignoring these opportunities."
16 Chip and Bob agreed, "Yes, you are right. The
17 compensation structure is going to have to change,
18 and we will take a look at how we are going to do
19 that."

20 Q. What else do you recall being said by the
21 four people that attended this meeting on this
22 subject?

23 A. On the financials subject?

24 Q. Yes.

1 A. I don't remember any other conversation.

2 Q. Was there any other discussion of a
3 business nature involving MRO and M² that took place
4 at that dinner that you haven't now described to me
5 that you can recall?

6 A. No.

7 Q. Was there any discussion of a business
8 nature involving MRO and M² that took place while you
9 were playing golf that day that you haven't
10 described to me?

11 A. No, nothing of substance.

12 Q. Have you now exhausted your memory of what
13 was said on the MRO/M² relationship --

14 A. Yes.

15 Q. -- during that dinner?

16 A. Yes.

17 Q. And that day?

18 A. Yes.

19 Q. Now, the Portsmouth, Rhode Island, golf
20 match -- just give me one moment to catch up on my
21 notes here, and we'll go to that.

22 Now, the Portsmouth, Rhode Island, game,
23 that took place in mid-summer 2002; is that right?

24 A. Correct. That's what I recall.

1 and then I drove home after that.

2 Q. What business between M² and MRO was
3 discussed at this meeting or during this day?

4 A. During the golf round frankly there wasn't
5 a lot of -- you know, there was a lot of casual
6 conversation, not so much about business. Then we
7 had lunch, and we were talking about the particulars
8 of how this rollout would occur. And then, you
9 know, as we are walking Bob in the parking lot, you
10 know, Rick asked Bob, "Bob, is this a done deal?"
11 And Bob said, "Absolutely this is a done deal." And
12 Rick said, "Are we going to roll this out to
13 the" -- "just to the middle market sales
14 organization or is it going to be large and middle,"
15 and Bob said, "Large and middle." But he
16 emphatically reiterated that this was a done deal,
17 that it had been approved by Chip. It had been
18 approved by the powers at be, MRO, and, you know, it
19 was done.

20 Q. Let's back up a little bit. What business
21 was discussed over lunch?

22 A. Again, I think we were talking a lot about
23 Rick's financials. You know, how many customers,
24 what is the volume, how much do you get per customer

1 per seat, blah-blah-blah, a lot of that type of
2 conversation, and it was really to bring Ted up to
3 speed, not for Bob's benefit. I think it was Ted
4 wanting to -- if I understood correctly, Bob
5 reported to Ted who reported to Chip, and so this
6 was Ted's opportunity to ask directly, you know,
7 kind of what the business was all about. So it was
8 a bit of an education for Ted, but I specifically
9 remember kind of going through -- for some reason I
10 think there was a spreadsheet there or something
11 where Ted was going through the numbers, you know,
12 all the customers that M² had, how much the recurring
13 billing rate was.

14 Q. So Mr. Williams was being educated --

15 A. Correct --

16 Q. -- by M² business?

17 A. -- on the specifics of the economics of his
18 business.

19 Q. , On the economics of the business?

20 A. Yes.

21 Q. And there was no discussion about, you
22 know, this done deal, you know, rollout, those
23 topics, during the four of you at lunch? It was
24 later when you walked Mr. Parker to his car?

1 A. No. The gist of the conversation was,
2 "This is great. We are excited about this." You
3 know, it was in the context of, you know, "This is
4 going to be a great relationship. We are very
5 excited about it. Tell me again, Rick. How much do
6 you charge," blah-blah-blah. "Okay. Good. Good.
7 Interesting. Great."

8 Q. Have you described for me now or told me
9 everything you remember about what was said during
10 this meeting? I would really like your full memory.

11 A. Yes. My vivid memory is just Bob, Rick and
12 I standing in the parking lot, and Rick staring him
13 in the eye and saying, "Bob, is this a done deal?"
14 And him looking back and saying, "Rick, this is
15 done. This is a done deal. We are completely
16 committed to this." Rick saying, "Bob, is this just
17 a mid-market or is it the large market?" He said,
18 "No. It's everything."

19 Q. Did you discuss with Mr. Bevington over the
20 course of this summer obtaining exclusive rights to
21 Maximo from MRO?

22 A. You mean to be the exclusive host?

23 Q. To be the exclusive ASP provider.

24 A. I think from the beginning that was off the

1 A. Yes, \$300,000 roughly.

2 Q. You hadn't put in the second \$100,000 yet?

3 A. No. I had. Actually, you are right. It
4 was \$400,000.

5 Q. It would have been \$400,000. So you would
6 have made 150 percent on your money in a couple of
7 years?

8 A. Yes, better than market.

9 Q. Certainly better than the market in 2001
10 and 2002, huh?

11 A. Exactly.

12 Q. You might have lost half your money in that
13 time.

14 So were you interested in seeing this
15 acquisition consummated?

16 A. I was interested in seeing either MRO live
17 up to its obligations or this deal get consummated.
18 Either looked attractive to me at that point.
19 Frankly, the MRO deal looked -- if they had honored
20 their obligation it would have probably been worth a
21 lot more than this, but this looked attractive to
22 me.

23 Q. And by "honor their obligation," you mean
24 rolled out the M² service to the entire MRO sales

1 force?

2 A. That's right. In addition to whatever
3 host -- other hosting options they rolled out.

4 Q. What does that mean, that last part of your
5 sentence?

6 A. Just if they had rolled this out to the
7 sales force, educated the sales force, given them
8 incentives to sell it, you know, even if they
9 decided to come up with some internal hosted option
10 because I believe that the M² service was --

11 Q. Would have been superior?

12 A. Would have been superior.

13 Q. Because it's hard for a company MRO's size
14 to do something as well as a small company with the
15 experience that you have to do it, correct?

16 A. That is correct.

17 Q. So you thought that you, your investment,
18 would be more valuable if MRO rolled out this
19 service, this M² service, might be more valuable than
20 the Indus acquisition?

21 A. Uh-huh.

22 Q. Yet you did not check to ensure that the
23 agreement that MRO and M² were negotiating would give
24 M² enough time to realize that value?